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Attorneys for Defendants
LEWIS FAMILY ENTERPRISES, INC. and
STEVEN ROBERT LEWIS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FORD MOTOR CREDIT COMPANY,
LLC, a Delaware Limited Liability
Company,

Plaintiff,

vs.

LEWIS FAMILY ENTERPRISES,
INC., dba BOB LEWIS LINCOLN
MERCURY, a California corporation,
and STEVEN ROBERT LEWIS, an
individual,

Defendants.

Case No.: C 07-03301 JW

**DECLARATION OF STEVEN ROBERT
LEWIS IN SUPPORT OF DEFENDANTS'
APPLICATION TO SET ASIDE CLERK'S
ENTRIES OF DEFAULT**

Hearing Date: October 15, 2007
Hearing Time: 9:00 a.m.
Courtroom: 8, 4th Floor
Judge: Honorable James Ware

I, Steven Robert Lewis, hereby declare as follows:

1. I am the individual defendant named in the above-entitled action, and am the president of Defendant Lewis Family Enterprises, Inc., a California corporation (the corporation").

2. The corporation owned and operated a Ford Lincoln Mercury franchise/dealership located at 911 Capitol Expressway Auto Mall, San Jose, California (the "dealership").

3. Plaintiff Ford Motor Credit Company, LLC ("Plaintiff") advanced monetary sums to the corporation to assist in its purchase of Ford automobiles for sale by the

1 dealership. Prior to Plaintiff's commencement of the underlying action, the corporation
2 became indebted to Plaintiff for various monetary sums so advanced. However, the
3 corporation was in the process of repaying its debt to Plaintiff, and had accordingly
4 reduced the amount of the debt outstanding.

5 4. Beginning in or about June 2007, the corporation and Ford Dealer
6 Development, which is operated by Ford Motor Company (the parent company of
7 Plaintiff), commenced buy-sell negotiations for the purchase of the dealership by the
8 latter. (Plaintiff is a wholly owned subsidiary of Ford Motor Company.)

9 5. I was of the understanding that Ford Dealer Development would acquire all of
10 the dealership's inventory (including the automobiles purchased by the corporation with
11 the financing provided by Plaintiff) at the successful conclusion of the buy-sell
12 negotiations, and would thereafter remit the value of the inventory so acquired to Plaintiff
13 in partial settlement of the debt owed by the corporation. I further understood that any
14 remaining deficiency would be satisfied from the sales proceeds realized by the
15 corporation upon the sale of the dealership to Ford Dealer Development, or that a final
16 payoff amount (or payment plan) would be negotiated with Plaintiff following the
17 conclusion of the buy-sell. Because Plaintiff was aware of the corporation's buy-sell
18 discussions with Ford Dealer Development, I understood Plaintiff to be in agreement with
19 this arrangement for the repayment of the debt outstanding.

20 6. Nevertheless, on June 22, 2007, Plaintiff filed a Complaint for: (1) Breach of
21 Wholesale Agreement; (2) Breach of Capital Loan Agreement; (3) Replevin; (4) Specific
22 Performance; (5) Injunctive Relief; and (6) Breach of Guaranty (the "complaint"). On June
23 25, 2007, the corporation was served with a summons and the complaint by substituted
24 service. Thereafter, on June 26, 2007, I was personally served with a summons and the
25 complaint.

26 7. On June 26, 2007, Plaintiff additionally filed an ex parte application for writ of
27 possession and for a temporary restraining order. I received notice of the ex parte
28 application by telephone and by electronic mail.

1 8. I immediately contacted my then-counsel, Gary S. Vandeweghe, Esq., and
2 discovered that he was out of the country. Both Plaintiff and the Court were advised of his
3 absence and unavailability.

4 9. To ascertain why Plaintiff had commenced legal proceedings despite its
5 awareness of the corporation's continuing buy-sell negotiations with Ford Dealer
6 Development, I contacted Phil Ward, a Territory Sales Manager for Plaintiff. In response
7 thereto, Mr. Ward essentially indicated that Plaintiff was getting its ducks in a row or
8 commencing preliminary procedures to secure the repayment of the debt owed by the
9 corporation. Based on my conversation with Mr. Ward, it was my belief that I did not need
10 to answer the complaint or oppose the ex parte application as Plaintiff had agreed to
11 stand-down in light of the corporation's continuing buy-sell negotiations with Ford Dealer
12 Development.

13 10. On or about August 1, 2007, the Court Clerk entered my default and the
14 default of the corporation.

15 11. On or about August 3, 2007, the corporation and I were served with an order
16 for writ of possession. Despite having received this order, I was of the continuing belief
17 that the underlying action would be dismissed upon the completion of the buy-sell
18 agreement, as the outstanding debt would substantially be satisfied, and that the
19 remaining balance would either be repaid by the corporation from the proceeds of the sale
20 or negotiated with Plaintiff.

21 12. However, shortly thereafter, the corporation's negotiations with Ford Dealer
22 Development reached an impasse, and no further discussions were had. In short, Ford
23 Dealer Development was no longer interested in purchasing the dealership. The
24 corporation thereafter terminated/resigned the franchise (the dealership) to Ford Motor
25 Company. I notified Plaintiff of the termination. Under the terms of the termination of the
26 franchise, Ford Motor Company would purchase the assets of the dealership (including
27 the dealership's vehicles and other inventory), and would turn over the inventory and/or
28 payments therefor to Plaintiff in partial settlement of the corporation's outstanding debt.

1 13. Despite its knowledge that the outstanding debt owed by the corporation
2 would be substantially settled by Ford Motor Company in light of the corporation's
3 termination of the franchise, Plaintiff nonetheless proceeded to execute on the order for
4 possession.

5 14. Based on my belief that the corporation's obligations to Plaintiff would be
6 negotiated or settled shortly following Ford Dealer Development's purchase of the
7 dealership, I understood that Plaintiff would dismiss the legal suit that it had brought
8 against the corporation and me. Therefore, I failed to give due attention to the Clerk's
9 entries of default against the corporation and me.

10 15. Attached hereto as Exhibit A and incorporated herein by this reference is a
11 copy of the proposed Answer of Defendants Lewis Family Enterprises, Inc. and Steven
12 Robert Lewis to the complaint.

13 I declare under penalty of perjury under the laws of the United States and of the
14 State of California that the foregoing is true and correct. Executed this 7th day of
15 September 2007 at Monte Sereno, California.

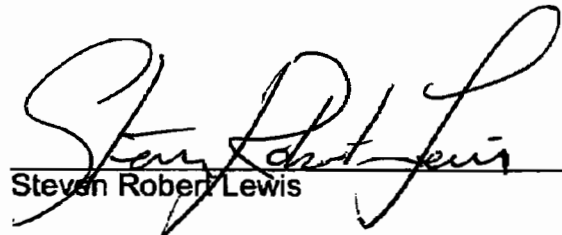
16
17
18 
19 Steven Robert Lewis

Exhibit A

DAVID J. STOCK (SBN 85655)
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Defendants.

Case No.: C 07-03301 JW

**ANSWER OF DEFENDANTS LEWIS
FAMILY ENTERPRISES, INC. AND
STEVEN ROBERT LEWIS; AND DEMAND
FOR JURY TRIAL**

Defendants LEWIS FAMILY ENTERPRISES, INC. and STEVEN ROBERT LEWIS
(individually, "Defendant Bob Lewis Lincoln Mercury" and "Defendant Lewis"; collectively,
"Defendants") answer Plaintiff FORD MOTOR CREDIT COMPANY, LLC's ("Plaintiff's")
Complaint for: (1) Breach of Wholesale Agreement; (2) Breach of Capital Loan
Agreement; (3) Replevin; (4) Specific Performance; (5) Injunctive Relief; (6) Breach of
Guaranty (the "Complaint") as follows:

1. In answer to paragraph 1 of the Complaint, Defendants are without sufficient
knowledge or information to form a belief as to the truth of the allegations contained in
said paragraph, and on that basis deny each and every allegation contained therein.

2. In answer to paragraph 2 of the Complaint, Defendants admit all allegations therein.

3. In answer to paragraph 3 of the Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis deny each and every allegation contained therein.

4. In answer to paragraph 4 of the Complaint, Defendants admit all allegations therein.

5. In answer to paragraph 5 of the Complaint, Defendants admit that Defendant Lewis is an individual who is a citizen of the State of California and a resident of Santa Clara County. Except as so admitted, Defendants deny each and every allegation contained in said paragraph.

6. In answer to paragraph 6 of the Complaint, Defendants admit that Plaintiff and Defendant Bob Lewis Lincoln Mercury entered into an agreement titled Automotive Wholesale Plan Application for Wholesale Financing and Security Agreement and that under said agreement Plaintiff provided Defendant Bob Lewis Lincoln Mercury financing. Except as so admitted, Defendants deny each and every allegation contained in said paragraph.

7. In answer to paragraph 7 of the Complaint, Defendants admit all allegations therein.

8. In answer to paragraph 8 of the Complaint, Defendants admit all allegations therein.

9. In answer to paragraph 9 of the Complaint, Defendants admit all allegations therein.

10. In answer to paragraph 10 of the Complaint, Defendants admit all allegations therein.

11. In answer to paragraph 11 of the Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis deny each and every allegation contained

1 therein.

2 12. In answer to paragraph 12 of the Complaint, Defendants admit that under
3 the Master Loan and Security Agreement Defendant Bob Lewis Lincoln Mercury granted
4 Plaintiff a security interest in the "Collateral" as defined in said agreement. Except as so
5 admitted, Defendants deny each and every allegation contained in said paragraph.

6 13. In answer to paragraph 13 of the Complaint, Defendants maintain that there
7 are no charging allegations therein.

8 14. In answer to paragraph 14 of the Complaint, Defendants are without
9 sufficient knowledge or information to form a belief as to the truth of the allegations
10 contained in said paragraph, and on that basis deny each and every allegation contained
11 therein.

12 15. In answer to paragraph 15 of the Complaint, Defendants maintain that there
13 are no charging allegations therein.

14 16. In answer to paragraph 16 of the Complaint, Defendants admit that
15 Defendant Lewis executed and delivered to Plaintiff a Continuing Guaranty. Except as so
16 admitted, Defendants deny each and every allegation contained in said paragraph.

17 17. In answer to paragraph 17 of the Complaint, Defendants maintain that there
18 are no charging allegations therein.

19 18. In answer to paragraph 18 of the Complaint, Defendants incorporate by
20 reference each and every denial, defense, or objection contained in Defendants' answer
21 to paragraphs 1 through 17 to the same extent that Plaintiff has incorporated the
22 allegations of paragraphs 1 through 17 of the Complaint by paragraph 18 of the
23 Complaint.

24 19. In answer to paragraph 19 of the Complaint, Defendants deny each and
25 every allegation contained in said paragraph.

26 20. In answer to paragraph 20 of the Complaint, Defendants admit that Plaintiff
27 conducted an audit of the inventory and accounts of Defendant Bob Lewis Lincoln
28 Mercury, and admit that Defendant Bob Lewis Lincoln Mercury sold vehicles and failed to

1 repay Plaintiff the amounts advanced to Defendant Bob Lewis Lincoln Mercury thus
2 creating a sales out of trust or "SOT" condition. Except as so admitted, Defendants deny
3 each and every allegation contained in said paragraph.

4 21. In answer to paragraph 21 of the Complaint, Defendants admit that Plaintiff
5 conducted an audit. Except as so admitted, Defendants are without sufficient knowledge
6 or information to form a belief as to the truth of the remaining allegations contained in said
7 paragraph, and on that basis deny each and every remaining allegation contained therein.

8 22. In answer to paragraph 22 of the Complaint, Defendants are without
9 sufficient knowledge or information to form a belief as to the truth of the allegations
10 contained in said paragraph, and on that basis deny each and every allegations contained
11 therein.

12 23. In answer to paragraph 23 of the Complaint, Defendants deny that Plaintiff
13 has demanded that Defendant Bob Lewis Lincoln Mercury pay the "amounts owing," and
14 further deny that Defendant Bob Lewis Lincoln Mercury has failed and refused to pay the
15 amounts now due. Defendants are without sufficient knowledge or information to form a
16 belief as to the truth of the remaining allegations contained in said paragraph, and on that
17 basis deny each and every remaining allegation contained therein.

18 24. In answer to paragraph 24 of the Complaint, Defendants deny each and
19 every allegation contained in said paragraph.

20 25. In answer to paragraph 25 of the Complaint, Defendants incorporate by
21 reference each and every denial, defense, or objection contained in Defendants' answer
22 to paragraphs 1 through 24 to the same extent that Plaintiff has incorporated the
23 allegations of paragraphs 1 through 24 of the Complaint by paragraph 25 of the
24 Complaint.

25 26. In answer to paragraph 26 of the Complaint, Defendants are without
26 sufficient knowledge or information to form a belief as to the truth of the allegations
27 contained in said paragraph, and on that basis deny each and every allegation contained
28 therein.

1 27. In answer to paragraph 27 of the Complaint, Defendants are without
2 sufficient knowledge or information to form a belief as to the truth of the allegations
3 contained in said paragraph, and on that basis deny each and every allegations contained
4 therein.

5 28. In answer to paragraph 28 of the Complaint, Defendants deny each and
6 every allegation contained in said paragraph.

7 29. In answer to paragraph 29 of the Complaint, Defendants incorporate by
8 reference each and every denial, defense, or objection contained in Defendants' answer
9 to paragraphs 1 through 28 to the same extent that Plaintiff has incorporated the
10 allegations of paragraphs 1 through 28 of the Complaint by paragraph 29 of the
11 Complaint.

12 30. In answer to paragraph 30 of the Complaint, Defendants admit that under
13 the Security Agreement Defendant Bob Lewis Lincoln Mercury granted to Plaintiff a
14 security interest in the "Collateral" as defined under said agreement. Except as so
15 admitted, Defendants deny each and every allegation contained in said paragraph.

16 31. In answer to paragraph 31 of the Complaint, Defendants deny each and
17 every allegation contained in said paragraph.

18 32. In answer to paragraph 32 of the Complaint, Defendants deny each and
19 every allegation contained in said paragraph.

20 33. In answer to paragraph 33 of the Complaint, Defendants deny each and
21 every allegation contained in said paragraph.

22 34. In answer to paragraph 34 of the Complaint, Defendants admit that Plaintiff
23 has inspected Defendant Bob Lewis Lincoln Mercury's sales lot at 911 Capitol
24 Expressway Auto Mall, San Jose, California 95136. Except as so admitted, Defendants
25 deny each and every allegation contained in said paragraph.

26 35. In answer to paragraph 35 of the Complaint, Defendants are without
27 sufficient knowledge or information to form a belief as to the truth of the allegations
28 contained in said paragraph, and on that basis deny each and every allegation contained

1 therein.

2 36. In answer to paragraph 36 of the Complaint, Defendants are without
3 sufficient knowledge or information to form a belief as to the truth of the allegations
4 contained in said paragraph, and on that basis deny each and every allegation contained
5 therein.

6 37. In answer to paragraph 37 of the Complaint, Defendants are without
7 sufficient knowledge or information to form a belief as to the truth of the allegations
8 contained in said paragraph, and on that basis deny each and every allegation contained
9 therein.

10 38. In answer to paragraph 38 of the Complaint, Defendants maintain that there
11 are no charging allegations therein.

12 39. In answer to paragraph 39 of the Complaint, Defendants maintain that there
13 are no charging allegations therein.

14 40. In answer to paragraph 40 of the Complaint, Defendants incorporate by
15 reference each and every denial, defense, or objection contained in Defendants' answer
16 to paragraphs 1 through 39 to the same extent that Plaintiff has incorporated the
17 allegations of paragraphs 1 through 39 of the Complaint by paragraph 40 of the
18 Complaint.

19 41. In answer to paragraph 41 of the Complaint, Defendants deny each and
20 every allegation contained in said paragraph.

21 42. In answer to paragraph 42 of the Complaint, Defendants deny each and
22 every allegation contained in said paragraph.

23 43. In answer to paragraph 43 of the Complaint, Defendants deny each and
24 every allegation contained in said paragraph.

25 44. In answer to paragraph 44 of the Complaint, Defendants deny each and
26 every allegation contained in said paragraph.

27 45. In answer to paragraph 45 of the Complaint, Defendants incorporate by
28 reference each and every denial, defense, or objection contained in Defendants' answer

1 to paragraphs 1 through 44 to the same extent that Plaintiff has incorporated the
2 allegations of paragraphs 1 through 44 of the Complaint by paragraph 45 of the
3 Complaint.

4 46. In answer to paragraph 46 of the Complaint, Defendants deny each and
5 every allegation contained in said paragraph.

6 47. In answer to paragraph 47 of the Complaint, Defendants deny each and
7 every allegation contained in said paragraph.

8 48. In answer to paragraph 48 of the Complaint, Defendants deny each and
9 every allegation contained in said paragraph.

10 49. In answer to paragraph 49 of the Complaint, Defendants deny each and
11 every allegation contained in said paragraph.

12 50. In answer to paragraph 50 of the Complaint, Defendants deny each and
13 every allegation contained in said paragraph.

14 51. In answer to paragraph 51 of the Complaint, Defendants maintain that there
15 are no charging allegations therein.

16 52. In answer to paragraph 52 of the Complaint, Defendants incorporate by
17 reference each and every denial, defense, or objection contained in Defendants' answer
18 to paragraphs 1 through 51 to the same extent that Plaintiff has incorporated the
19 allegations of paragraphs 1 through 51 of the Complaint by paragraph 52 of the
20 Complaint.

21 53. In answer to paragraph 53 of the Complaint, Defendants deny each and
22 every allegation contained in said paragraph.

23 54. In answer to paragraph 54 of the Complaint, Defendants are without
24 sufficient knowledge or information to form a belief as to the truth of the allegations
25 contained in said paragraph, and on that basis deny each and every allegations contained
26 therein.

27 AFFIRMATIVE DEFENSES

28 AS AND FOR A FIRST AFFIRMATIVE DEFENSE, Defendants allege that the

1 Complaint and each claim for relief therein fails to state facts sufficient to constitute a
2 cause of action against Defendants.

3 AS AND FOR A SECOND AFFIRMATIVE DEFENSE, Defendants allege that the
4 Complaint and each claim for relief therein is barred by the statute of limitations.

5 AS AND FOR A THIRD AFFIRMATIVE DEFENSE, Defendants allege that the
6 damages of which Plaintiff complains, if any there were, were proximately caused by the
7 negligence, strict liability, breach of contract and breach of warranties by other persons,
8 firms, corporations and entities, including other third parties, for whom Defendants are not
9 and were not responsible, and should Plaintiff be entitled to recover under the Complaint,
10 Plaintiff's recovery should be reduced in proportion to the negligence, strict liability, breach
11 of warranties and breach of contract of such other persons, firms, corporations and
12 entities.

13 AS AND FOR A FOURTH AFFIRMATIVE DEFENSE, Defendants allege the
14 alleged damages of Plaintiff, if any there were, were aggravated by the failure of Plaintiff
15 to use reasonable diligence to mitigate these damages, which failure bars or reduces
16 recovery by Plaintiff.

17 AS AND FOR A FIFTH AFFIRMATIVE DEFENSE, Defendants allege that Plaintiff
18 has directed, ordered, approved and ratified the conduct of Defendants as alleged in the
19 Complaint, and Plaintiff is therefore estopped from asserting any claim based thereon.

20 AS AND FOR A SIXTH AFFIRMATIVE DEFENSE, Defendants allege that Plaintiff
21 has by its own conduct waived any rights and claims as set forth in the Complaint.

22 AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE, Defendants allege that
23 Plaintiff assumed the risk of any damage resulting from the matters set forth in said
24 Complaint, if any there were, and that said risk assumed by Plaintiff was a proximate
25 cause of the damages alleged by Plaintiff, if any there were.

26 AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE, Defendants allege that
27 Plaintiff was itself negligent and careless in and about the matters and events set forth in
28 the Complaint, and that said negligence proximately contributed to its alleged damages, if

1 any there were. Any judgment in favor of Plaintiff, if any, which may be rendered in this
2 case must therefore be reduced by the percentage of negligence of Plaintiff which
3 contributed to the damages complained of, if any there were.

4 AS AND FOR A NINTH AFFIRMATIVE DEFENSE, Defendants allege that Plaintiff
5 has failed to take reasonable or adequate steps to mitigate, alter, reduce or otherwise
6 diminish the damages, if any, suffered by it. By reason of the foregoing, Plaintiff is barred
7 from recovery of any damages that might have been prevented by those steps.

8 AS AND FOR A TENTH AFFIRMATIVE DEFENSE, Defendants allege that Plaintiff
9 is barred by the equitable doctrine of estoppel.

10 AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE, Defendants allege that
11 there is no writing pursuant to any applicable statute, which provides for the award of
12 attorney's fees and costs in favor of Plaintiff as against Defendants.

13 AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE, Defendants allege that
14 Plaintiff's claims are barred by the equitable doctrine of laches.

15 AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE, Defendants allege that
16 Plaintiff's claims are barred by the equitable doctrine of unclean hands.

17 AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE, Defendants allege that
18 Plaintiff's claims are barred by the equitable doctrine of waiver.

19 AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE, Defendants allege that the
20 contracts alleged in the Complaint were subsequently modified after execution in that
21 Plaintiffs and/or their agents, by oral representations and by conduct or custom that were
22 antithetical to the terms of the written contracts alleged in the Complaint, induced
23 Defendants to rely on that behavior. Plaintiff is therefore estopped from denying that the
24 contracts alleged in the Complaint were modified.

25 AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE, Defendants allege that
26 they were induced not to perform under the contracts alleged in the Complaint by the
27 representations, acts, and conduct of Plaintiff intended or naturally tending to have taht
28 effect.

WHEREFORE, Defendants pray as follows:

1. That the Court dismiss Plaintiff's Complaint with prejudice;
2. That Plaintiff take nothing by reason of its Complaint;
3. That Defendants be awarded their reasonable attorneys' fees;
4. That Defendants be awarded their costs of suit; and
5. For such other and further relief as the Court deems appropriate.

Respectfully submitted,

Dated: _____, 2007

RANKIN, LANDSNESS, LAHDE,
SERVERIAN & STOCK

By: _____

David J. Stock, Attorneys for
for Defendants LEWIS FAMILY
ENTERPRISES, INC. and
STEVEN ROBERT LEWIS

DEMAND FOR JURY TRIAL

Defendants LEWIS FAMILY ENTERPRISES, INC. and STEVEN ROBERT LEWIS
hereby demand a trial by jury.

Respectfully submitted,

Dated: _____, 2007

RANKIN, LANDSNESS, LAHDE,
SERVERIAN & STOCK

By: _____

David J. Stock, Attorneys for
for Defendants LEWIS FAMILY
ENTERPRISES, INC. and
STEVEN ROBERT LEWIS

VERIFICATION

I, Steven Robert Lewis, am a Defendant in the above-entitled proceeding. I am also the president of Defendant Lewis Family Enterprises, Inc., a California corporation, and am authorized to make this verification on behalf of said corporation. I have read the foregoing **ANSWER OF DEFENDANTS LEWIS FAMILY ENTERPRISES, INC. AND STEVEN ROBERT LEWIS**, and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein represented on information and belief, and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the United States of America and of the State of California that the foregoing is true and correct. Executed at Monte Sereno, California, on this _____ day of _____ 2007.

Steven Robert Lewis

Steven Robert Lewis, President of Lewis Family Enterprises, Inc.